

**TESTIMONY OF
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DEPUTY ASSISTANT SECRETARY
LAND AND MINERALS MANAGEMENT
UNITED STATES DEPARTMENT OF THE INTERIOR BEFORE THE HOUSE RESOURCES
COMMITTEE**

**H.R. 4908, THE PECHANGA BAND OF LUISENO MISSION INDIANS LAND TRANSFER ACT
SEPTEMBER 21, 2004**

Thank you for the opportunity to testify on H.R. 4908, the Pechanga Band of Luiseno Mission Indians Land Transfer Act. This legislation directs the Secretary of the Interior to transfer two parcels of public land totaling approximately 991 acres in Riverside County, California, currently managed by the Bureau of Land Management (BLM), into trust status for the benefit of the Pechanga Band of Luiseno Mission Indians.

The Department of the Interior supports the bill, and recommends certain technical and clarifying amendments pertaining to an accurate legal description, surveys, valid existing rights, and improvements. Also, as the Department has testified in the past, the Department would recommend a more specific definition of the expectations regarding land placed in trust. These issues are described more fully below and we would like to work with the Committee to resolve them.

Background

The BLM has worked with the Pechanga Band of Luiseno Mission Indians over the past several years concerning their interest in acquiring these two parcels of land to add to their reservation. Both parcels are covered by BLM's 1994 South Coast Resource Management Plan (RMP), which does not identify the parcels for disposal. The Department understands that the Tribe has enacted a Tribal resolution committing the Tribe to conserving the parcels' cultural and wildlife values. Recognizing the Tribe's interest in obtaining the land for cultural and conservation purposes, the BLM today would be supportive of amending its land use plan to enable the transfer to proceed. However, that process could take several years to complete and the Tribe has sought this legislation to obtain the parcels more quickly through the legislative process.

The first parcel is 19.83 acres and contains significant cultural properties, including burials, of high importance to the Tribe. It is an isolated public land parcel characterized by rolling coastal sage scrub and surrounded by private, generally residential, lands. In response to potential threats to the cultural resources of the parcel, the BLM instituted a Public Land Order (No. 7343) in 1998 that withdrew the entire parcel from surface entry, mining, mineral leasing, and mineral material sales. There are no other encumbrances, including mining claims, which are known to exist on the lands. A Memorandum of Understanding between BLM and the Pechanga Tribe was initiated in 2001 which outlines cooperative management of the parcel, including preservation of its cultural resources values. The Tribe owns and maintains an adjacent parcel of land containing another portion of the Pechanga Historical Site.

The second, and much larger parcel, is 970.96 acres and is adjacent to the Tribe's reservation. These lands are included in the Western Riverside County Multi-Species Habitat Conservation Plan and the Fish and Wildlife Service (FWS) has found them to be significant for their connectivity with rivers and as wildlife corridor. The Tribe and others were consulted on the Plan, and these wildlife values are encompassed in the Tribal resolution referenced above. This rugged parcel is characterized by a dense mix of oak woodlands, chaparral and coastal sage scrub, and slopes throughout the parcel are steep and eroded. The parcel also includes a service road right-of-way, as well as a 10-inch waterline and water tank that was granted for 30 years to the Rainbow Municipal Water District in 1983. No other encumbrances, including mining claims, are known to exist within this parcel.

Trust Status

The Department has continued to express concern about deciphering Congressional intent regarding land

in trust. The proposed transfer would increase the ability of the Pechanga Band of Luiseno Mission Indians to protect the cultural and natural resources in the area, but it also raises questions about the nature and extent of the trust responsibilities being placed on the Federal Government.

As the trustee for Native Americans, the Department has devoted a great deal of time to trust reform discussions over the past few years. The nature of the trust relationship is now often the subject of litigation. Both the Executive Branch and the Judicial Branch are faced with the question of what exactly Congress intends when it puts land into trust status. What specific duties are required of the Secretary, administering the trust for the benefit of the Tribes, with respect to trust lands? Tribes and individual Indians frequently assert that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust default principles and a trust instrument that defines the scope of the trust responsibility. We believe that Congress, when it establishes a new trust obligation, should provide the guideposts for defining what that relationship means.

Much of the current controversy over trust stems from the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. The Trustee may face a variety of issues, including land use and zoning issues. Accordingly, the trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts.

Therefore, we recommend the Committee set forth in the bill the specific trust duties it wishes the United States to assume with respect to the acquisition of these lands for the Pechanga Band of Luiseno Mission Indians. Alternatively, the Committee should require a trust instrument before any land is taken into trust. This trust instrument would ideally be contained in regulations drafted after consultation with the Pechanga Band of Luiseno Mission Indians and the local community, consistent with parameters set forth by Congress in this legislation. The benefits of either approach are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided.

Additional Concerns

While the Department of the Interior supports the transfer of the lands from the BLM to the Tribe, we also recommend a number of technical and clarifying amendments. First, the Department would like to work with the Committee to ensure that a correct legal description is included in the bill. Also, the BLM has designed a map that accurately reflects the lands to be transferred and we recommend that this map be referenced in the legislation.

The bill also requires the BLM to complete a whole new survey. We recommend that the lands to be transferred be surveyed "as soon as practicable," rather than within 180 days, as currently required by the bill.

We also recommend that the bill include language protecting valid existing rights to avoid an inadvertent taking of private property.

Finally, we recommend language be added to the bill that specifies that any improvements, appurtenances, and personal property will be transferred to the Tribe in fee at no cost and the Department of the Interior is not responsible for any improvements, appurtenances, and personal property that may be transferred along with the lands. The Department feels this change is necessary to address concerns about the Government having a fiduciary obligation to repair and maintain any acquired improvements.

Conclusion

The Department has had a very cooperative working relationship with Pechanga Tribe on the proposed land transfer and supports the bill's enactment with the necessary modifications we have outlined. Thank you again for the opportunity to testify on the bill and I will be glad to answer any questions.

